CONSIDERATIONS

ON

PROCEEDINGS

BY

INFORMATION

AND

ATTACHMENT.

By a BARRISTER at LAW.

Invalido Legum Auxilio quæ vi, ambitu poſtremo pecunia turbabantur.——TACITI ANNALES.

LONDON:

Printed for W. HARRIS, N° 70. the North Side of St Paul's Church-yard.

M DCC LXVIII.

TO

JOHN GLYNN, *Esq;*

SERJEANT at LAW;

These CONSIDERATIONS are

DEDICATED:

As a Testimony of

RESPECT and ESTEEM

FOR HIS

ABILITIES and CONDUCT,

By

His humble Servant,

THE AUTHOR.

CONSIDERATIONS

ON

PROCEEDINGS by INFORMATION and ATTACHMENT.

THE preſent reign has been a continued ſcene of diſſention between the Miniſtry and People: the former graſping at more Power, the latter ſtruggling for more Liberty. Proſecutions for *Libels* againſt Government have been more frequent than in any reign that hiſtory informs us of. Authors, Publiſhers, Printers, and even Venders of what are ſtigmatiſed with the epithet of *Seditious Libels*, have been involved in the ſame common fate. The new-fangled engines of theſe proſecutions have been *Informations* and *Attachments*. What I propoſe in the ſubſequent pages is, to conſider them on Conſtitutional principles, whether they breathe the

mild ſpirit of the laws of *England*, and are of a congenial diſpoſition; or whether they are in their nature repugnant to the principles of our free conſtitution.

The proſecuting ſpirit of the times will not permit me to ſpeak with that unreſerved freedom which my inclination would prompt me to: a freedom which would render me obnoxious to thoſe dreadful thunderbolts of miniſterial vengeance, which it is my wiſh to have condemned, as abhorrent to every idea of conſtitutional liberty.

Let the reader draw ſuch concluſions as he pleaſes from what occurs to him in the peruſal of the following ſheets; I cannot be anſwerable for the thoughts or interpretations of others. It is ſufficient that I am ready to anſwer for what I write.

The LIBERTY of the PRESS is one of the moſt valuable privileges of Engliſhmen; and, when employ'd to patriotic purpoſes, merits the patronage and protection of courts of judicature. As the intereſt of every member of ſociety is concerned in the proper admi-

adminiſtration of public affairs, he has a right to publiſh his thoughts upon them. This freedom of writing and ſpeaking, has more than once preſerved our conſtitution. An upright government can no more be injured by ſeditious publications, than the intereſts of religion by deiſtical writings, which, when fairly brought to the teſt, eſtabliſh its fundamental doctrines, and ſhew the futility of all endeavours to ſubvert it.

The liberty we have of animadverting upon the conduct of every man in place, from the *firſt* miniſter of ſtate to the *loweſt* clerk in office, is the principal reaſon why we have not ſunk into that abject ſtate of ſlavery which neighbouring nations are involved in.

The love of popular applauſe, and deſire of laſting fame, is the nobleſt motive to every magiſtrate to act for the common good. To have his conduct examined with the moſt minute and critical analyſis, ought to be, I will ſay muſt be, the wiſh of every good governor, of every upright judge. The obloquy of a ſmall part of mankind cannot

tarniſh the ſplendor of that true fame which is eſtabliſhed on ſo ſolid a baſis. If attacked by the ill-founded opprobrium of malevolence, he purſues not vindictive means to redreſs the injury. His authority needs no other ſupport than the juſtice of his conduct.

In the ſubſequent inveſtigation on the modes of proceeding in criminal caſes by *Information* and *Attachment*, it is my intention to argue on legal principles, not to ranſack the lumber of old *Reporters* for muſty caſes to found my opinion on. I am not ſo little converſant in law-learning, as not to know, that there are no doctrines, however favourable or prejudicial to liberty they may be, that cannot be eſtabliſhed by precedents. Hiſtories inform us of Judges of very different complexions and characters; ſome whoſe inclination or intereſt led them to lop the luxuriant branches of prerogative, others to foſter the poiſonous plant; and each met with the ſame ſucceſs in finding *Precedents* to juſtify their conduct.

Weſtminſter-Hall has been a ſoil fertile in the production of every herb of noxious quality,

quality, every aconite of liberty. And the lawyers *(pudet hæc opprobria nobis)* have been induſtrious in maturing their growth. They have, in almoſt all reigns, been the tools of miniſterial power; and the law has been too often proſtituted to promote tyranny and oppreſſion. They have acted in concert with Prieſts, who call themſelves Miniſters of the Goſpel, and have abuſed that ſacred name to inculcate the moſt pernicious tenets. I will not ſay that there is any lawyer now who would be the tool of a miniſtry; who would, with all the art of a dextrous law-engineer, play the whole artillery of *Weſtminſter-Hall* to oppreſs a man under miniſterial diſpleaſure; who would exert all his legal ſubtlety and ſophiſtry, to form reaſons to eſtabliſh court doctrines; who would quote *precedents*, when precedents ſerved his purpoſe; and would reject them to determine on *principles*, when they combated with his favourite doctrines; who would ſometimes declare, that he would follow reaſon in his deciſions; at others, that he was bound by precedents againſt his own conviction: nor will I ſay, that c——t chaplains are at preſent encouraged to preach at

St

St J—— againſt the principles of Toleration; to inculcate the neceſſity that the proteſtant Diſſenters in our American plantations ſhould be Biſhop-ridden, to make them good Chriſtians and good ſubjects: That they ſhould ſo far forget their duty and character, as to ſtile our Coloniſts *ſeditious Hereticks*; or that prieſts in lawn, or prieſts in crape, would interfere in univerſity elections to promote the minion of a favourite: that would promiſe thoſe who were to be led by promiſes, and threaten thoſe who were to be intimidated by menaces.——If there have been any ſuch, I ſhall not rake up their aſhes; and if there are now any ſuch, let the world make the application.

In the following *Conſiderations*, which I have preſumed to ſubmit to the public attention, I propoſe ſpeaking of the two different modes of proceeding by *Attachment* and *Information* diſtinctly, with ſuch reaſons as induce me to think that they are repugnant to the ſpirit of our laws and conſtitution.

So

So very jealous was the old common law of every infringement that poſſibly might be made on the ſubject's liberty, that no one could be put upon his trial before a bill was found by a grand jury. That is, every perſon underwent a trial by *two* juries, who muſt agree in finding him guilty, before he could be convicted. This mode of trial is co-æval with the Engliſh conſtitution; it was long previous to the *Great Charter*; and is expreſsly confirmed by the 29th chapter, emphatically ſtiled THE GOLDEN CHAPTER. "*Nullus liber homo capiatur aut impriſonetur*, "*&c. niſi per judicium parium ſuorum, vel per* "*legem terræ.*" I know there are ſome perſons that would argue that this is diſjunctive. As if the mode of trial by a jury was introduced by this ſtatute, or that the *lex terræ*, or common law, ordained ſome other mode of trial than that by jury.

BUT, with ſubmiſſion to the authority of ſuch commentators, I would conjecture, that *vel per legem terræ* is only explanatory of what goes before: "That no man ſhall "be impriſoned without the judgment of "his peers, *vel per legem terræ*;" which has a re-

a reference to the judgment of his peers, being the common law. I am confirmed herein by the opinion of the great Lord Coke, who ſays, in his Commentary on *Magna Charta*, " No man ſhall be reſtrained " of his liberty by petition or ſuggeſtion to " king or council, without preſentment or " indictment." And he ſays, in his 3d *Inſtitute*, " That the king cannot put a man " to anſwer, without preſentment or in- " dictment."

In the idea of law, the King is ſuppoſed to preſide in perſon in his courts, and actually did ſo formerly; and in the *King's-Bench* writs are ſtill returnable " before the " King himſelf at *Weſtminſter*." So that to ſay that the King ſhall not put a man to anſwer without preſentment or indictment; is in other words ſaying, that his courts ſhall not put a man to anſwer without preſentment or indictment; for the King has no judicial power independent of them.

There is nothing more evident, than that the mode of proceeding by *Information* was entirely unknown to the old common law

law. For I have looked into our oldeſt law-writers, GLANVILLE (who wrote in the time of HENRY the ſecond) FLETA and BRACTON, and they ſay expreſsly, that crimes are to be proſecuted by *Preſentment* and *Indictment*. FLETA ſays, "that if a "perſon is impriſoned without indictment "by twelve men, an action lies for falſe "impriſonment." Thus we find that none of theſe Common-law Writers knew what *Informations* were. It was long after *Magna Charta* that they commenced. In the reigns of weak princes we find them to be in the moſt flouriſhing ſtate, down from the time of RICHARD the ſecond.

I DO not take upon me to controvert but there have been an infinity of precedents of *Informations* (or, as they were formerly called, *Suggeſtions*) in the different reigns of *Richard* the ſecond, *Henry* the fifth and ſeventh, *Charles* the firſt, &c. down to *George* the third.—I have taken ſome pains to examine for what offences theſe proſecutions were commenced, and find them to be almoſt altogether for nuiſances, not repairing roads, &c.

It was the ſtatute of *Henry* the ſeventh which gave ſuch unlimited power to the *Star-Chamber*, that matured this mode of proceeding; this was the chief grievance complained of in that unconſtitutional court, and occaſioned its abolition in the time of *Charles* the firſt.

At the Revolution, an attempt was made to aboliſh all *Informations* as illegal; which Sir *Francis Winnington* endeavoured to accompliſh; this attempt not ſucceeding in *Weſtminſter-Hall*, recourſe was had to Parliament, where the power of the Maſter of the Crown-office in filing Informations *ex Officio* was totally aboliſhed, and other regulations made reſpecting Coſts, *&c.* that reflect great honour on that Parliament.

It is not my intention totally to deny the utility of the regular mode of proceeding by *Information*, on a *Rule* granted by the Court for the parties to ſhew cauſe why it ſhould not iſſue, which *Rule* upon no cauſe, or inſufficient cauſe ſhewn, to be made *abſolute*. Which only ſerves as an Indictment or Preſentment of a *Grand Jury*, and is afterwards

terwards to go to trial. This, where the ſpirit of faction or party runs high in the nation, may not be improper; where it is probable that a Grand Jury, biaſſed by undue motives, would throw out a bill; yet it muſt be owned, that this will happen but very ſeldom. And I believe there is no one who has known an inſtance of a Grand Jury's throwing out a bill, if there was the leaſt foundation of evidence to ſupport it.

In ſhort, to ſay the beſt we can of this mode of proceeding (I mean the regular method of filing an *Information* by Rule of Court on motion of counſel) it tends to ſet aſide the old conſtitutional Common-law proceedings, by *Indictment* and *Preſentment* by Grand Juries, and annihilates their exiſtence. But if Informations granted in the regular manner can be at all impeached, what ſhall we ſay of *Informations* filed *ex Officio* by the Attorney-General?

These are in themſelves ſo arbitrary, and conſequently of a nature ſo heterogeneous to the Laws, Conſtitution, and Liberties of this country, that it is impoſſible to repreſent

them in too odious a light. They are modes of proceeding becoming the meridians of *China* and *Japan*, not *England*.

By this method of proſecution, any man may be put to an enormous expence, however innocent he may be, without being brought to trial, or having his innocence evinced to the world. Information after Information may be filed againſt him, without trying the matter. As the Crown never pays Coſts, he ſuffers by every Information moſt ſeverely; till at length, after many Informations entered, and a *noli proſequi* to each, the defendant falls a ſacrifice to the vengeance of wicked miniſters.

This is a certain, eaſy, and effectual method of cruſhing any publication, however uſeful it may be; and of ruining any man who has courage enough to call in queſtion the acts of a Miniſter.

Numberless are the inſtances, where this kind of legal oppreſſion has been uſed with ſucceſs, and it is probable that it will not be diſcontinued, as it is ſo convenient an inſtrument

ſtrument to ſerve the ſiniſter purpoſes of any Miniſter, or Law-Lordling, whoſe unpopular conduct will not permit him to apply to his country for redreſs, and who can gratify his reſentment only by ſuch a proceeding.

The proper objects of proceedings by *Information*, I always held to be violent batteries, cheats; ſeducing children from their parents to be married; ſpiriting away children to the plantations; perjuries, forgeries, conſpiracies, &c. It was formerly held to be an uncontroverted point of Law, that the King ſhall put no one to anſwer for a wrong done principally to another, without *Preſentment* or *Indictment:* So that they were crimes that related to the Crown, or ſuch as were of a public nature, that were alone cognizable by this mode of proſecution.

I would aſk any man, whether crimes of that nature, as I have juſt recited, may not as well, or better, be proſecuted by Indictment or Preſentment: or, if an Information is neceſſary, in the name of common ſenſe, will not a regular Information, granted on a Rule to ſhew, do the buſineſs as well, as an

an Information filed *ex Officio* by the Attorney-General? This power of filing ſuch Informations, veſted in the Attorney-General, cannot be of any public benefit; every good end or purpoſe is fully and perfectly anſwered without it. But it may be, as it always has been, applied to very oppreſſive purpoſes, whilſt the moſt ingenious imagination cannot ſuggeſt the leaſt utility that can be derived from it.

EXTRAORDINARY indeed does it ſeem, that the Parliament, when they abrogated the power of the Maſter of the Crown-Office, of filing Informations *ex Officio*, did not lop off this excreſcent branch of Prerogative. Before the 4th and 5th of *William* and *Mary*, the Maſter of the Crown-Office, without application to the Court, was inveſted with the ſame extraordinary power that the Attorney-General is now; which then ſeemed a matter of ſo much grievance that it required immediate redreſs, which was accordingly done. This falls under the ſame miſchief, is equally oppreſſive, and, conſequently, equally demands redreſs. I may ſay, that this act was in a great meaſure

ſure nugatory, as it only redreſſed a grievance in part: for where is the utility of curtailing the power of the Maſter of the Crown Office, while that of the Attorney-General remains, which is equally oppreſſive? I have no great doubt, in my own mind, but it was the intention of the Legiſlature to abrogate *both*; but it has been conſtrued otherwiſe.

The Legiſlature have, by various acts, regarded *Informations* with no favourable aſpect; for by Act of Parliament the Defendant may plead the *general Iſſue*, and give the *ſpecial matter* in evidence. It would be no diſcredit to the Law, nor diſadvantage to the Lawyers, if this was allowed in many other caſes that it is not at preſent; as it would tend to abridge that great expence and delay of law, ſo greatly and ſo juſtly complained of. And the ſtatutes of Jeofail do not extend to Informations, ſo that the defendant can take hold of every ſlip in the proceedings; and the leaſt incertainty will vitiate the whole proceſs.

THIS ſerves to ſhew in what an unfavourable light Informations were held; and that both the Legiſlature and Courts of Law formerly would have the ſubject take hold of every advantage againſt ſo ſevere a method of proceeding.

I REMEMBER that *Hawkins*, in his *Pleas of the Crown*, ſays, "That there is at leaſt "as much certainty required in *Informa-* "*tions* as in *Indictments*;" and that as all the material parts of the crime muſt be expreſsly found in the one, ſo they muſt be expreſsly alledged in the other; and not by way of argument or recital. But now, (thanks to the bleſſed ingenuity of Lawyers!) there is a method found out to prevent any advantage being taken of any want of Form, or want of Certainty in Informations. For if there is not ſufficient certainty in the Record, it may be altered by the Judge in his chambers, by the ſubſtituting one word for another; tho' it is not even pretended that an *Indictment*, when once found, can ever be altered. I beg pardon for uſing the word ALTERED; AMENDED has a leſs harſh ſound, and is a more faſhionable term. The Amend-

Amendment of a Record has now been determined to be legal upon argument, and the moſt mature conſideration; and, doubtleſs, it will be a caſe in point for the conduct of all future Judges.

It is ſaid, that the late Lord Chief Juſtice Hale (who was one of the moſt learned and moſt upright Judges that ever ſat in *Weſtminſter-Hall)* was always of opinion, that the Attorney-General's *ex Officio* Information was illegal, and, if diſputed, could never ſtand its ground. Notwithſtanding the opinion of this great Lawyer, as it has become every day's practice, and eſtabliſhed by ſuch an infinity of precedents, I deſpair of ſeeing them ever overthrown by a legal determination.

If *Informations* are to be continued, it were to be wiſhed that it was in the breaſt of the Jury to aſſeſs the Puniſhment, whether Fine or Impriſonment on the party, adequate to the offence that they found him guilty of, and not to be in the arbitrary diſcretion of the Judge. For as it is the province of the Jury, on Actions, to give damages proportionable

tionable to the injury the party has received, why not to impoſe a Fine in proportion to the malignity of the offence, let it be againſt Government, or againſt an Individual? Both ſeem to be founded on the ſame reaſon.

When I ſat down to write theſe ſheets, it was not with a view of eſpouſing the cauſe of any factious Demagogue; but to explain to the Reader the Nature and Origin, and ſome of the bad Effects of Proſecutions by *Information*.

In all Governments founded on Republican Principles, Demagogues will ariſe. And however blameable their conduct may be, however intereſted their views and ſordid their motives, though ſpecious they appear, yet are they of the greateſt ſervice to the Commonwealth, if they have not the influence ſufficient to make themſelves deſpotic, and overturn the Conſtitution; which has ſometimes been the caſe. Theſe popular ſpirits, which blaze like comets for a ſeaſon, portend not deſtruction, but are attended with the moſt benign influences, and are the preſages of *Liberty*. Were it not

for

for the oppoſition of ſuch ſpirited men, there never would be a proper check againſt the violent meaſures which Government never fails to adopt. It corrects and moderates the rapidity of the machine, and cauſes the wheels to move with evenneſs and eaſe.

CERTAIN I am, that in all mixed Governments, the executive magiſtrate, ſupported by the Patrician power, would ſoon ſubvert the rights of the people, were it not for a continual oppoſition. It is a maxim in politics, juſtified by univerſal experience, and founded on the moſt intimate knowledge of human nature, " That every indi-
" vidual, and all bodies of men in their
" corporate capacities, ſtrive to increaſe that
" power with which they are inveſted, and
" endeavour to diminiſh, and by degrees
" aboliſh, the authority of any other body
" which counter-balances their power." Of this we have evident demonſtrations in hiſtory.

The Tribunes of the People, and Patricians at *Rome*, were in a continual ſtate of oppoſition, each aiming at an increaſe of

their own, and a diminution of their adverſaries power. And in England, the *Commons*, when they had it in their power, aboliſhed the authority of the *King* and *Lords*, and aſſumed the reins of Government to themſelves. It is a well-balanced oppoſition that makes an equilibrium in all the different departments of Government. Had it not been for the *Gracchi*, Rome would have loſt its liberties ſooner than it did: And England would be reduced to the ſame miſerable condition, were it not for ſome patriotic, though turbulent ſpirits, that appear in every age.

THE Rights of the People are never in greater danger than when they leaſt ſuſpect them ſo to be. If they are lulled into a ſecurity, the enemy is ever watchful to ſeize the opportunity. Commendable, therefore, is the employment of thoſe who are upon guard, to ſound the alarm whenever the enemy approaches.

HOWEVER I might condemn a man who proſtitutes the ſacred name of a *Patriot*, who aſſumes the title of a Lover and Defender

fender of *Liberty*, to gain popular applauſe; however I might deteſt and abhor his immoral conduct and irreligious principles, and look upon him as a monſter of impiety; yet even when ſuch a man is oppreſſed, when the Government endeavour to ſacrifice him to miniſterial deſpotiſm, and immolate him to the idol of arbitrary power; even ſuch a man then juſtly becomes the object of public notice. The oppreſſive means uſed againſt him may, with the ſame ſucceſs, be employed againſt others. It is impoſſible to determine where the miſchief will end. The next man that may fall a victim, may be endowed with the moſt exalted virtue and probity. "*Nobilitas opes*, "*omiſſi geſtique honores pro crimine, &c. et ob* "*virtutes certiſſimum exitium.*"

I WOULD therefore wiſh that *Informations*, eſpecially that ſpecies of *ex Officio* Informations which I have taken upon me to condemn, were to become the object of parliamentary conſideration: This was my deſire when I put pen to paper; it was my motive for doing it. This point has been incidentally debated in a late aſſembly, which has

has now departed this life, and finiſhed its political exiſtence. But what could be expected from ſuch a P———, who were ſo far from confirming the Liberties of the People, that they with great complaiſance gave up ſome of the moſt eſſential and valuable of their own Privileges.

No point ſeemed to be better ſettled, than that Privilege of P—— extended to all caſes except Treaſon, Felony, and Breach of the Peace. This was determined by the opinions of all the Judges, and ratified by a reſolution of the Houſe of Lords. Yet ſo very tenacious were they of their Privileges, that it was determined that it did not extend to the caſe of a *Libel*. This was not only given up freely, but they ſeemed to contend who ſhould recommend himſelf moſt to Adminiſtration, by the alacrity with which they ceded their Privileges. This was rendering themſelves expoſed to the vengeance of Miniſters, whenever they thought proper to unmuzzle the Blood Hounds of the Law, to hunt ſuch as dared to oppoſe them to deſtruction. Indeed, this was not ſurpriſing from this wonder-working P—;

one

one that could blow hot and cold; that could one day abrogate the Reſolutions of the preceding; that in ſeven years ſaw ſeven ſucceſſions of Miniſtry, who contradicted each other in all their proceedings. The meaſures of each Miniſtry were adopted with the ſame avidity, however repugnant to the proceedings of the former; and when a new one ſucceeded, they embraced the meaſures of the new, and reprobated thoſe of the old. They were formed in a very pliable Court-mould, liable to receive every impreſſion, and ſubſervient to every miniſterial impulſe.

BUT, peace be to the manes of the deceaſed!—It is hoped that there will never be a P——t in this nation that will tread in the ſteps of that which I have deſcribed.

HAPPY are we, if the Legiſlative ſhould become as corrupt as the Executive power, that its political life can be only for the ſpace of ſeven years: I wiſh it were only for three: for if it is a tyranny, a ſeven years tyranny is too long. When the people are burdened by any grievances, the only conſtitutional

ſtitutional method of redreſs is by application to Parliament. I deſpair of ever ſeeing the practice of filing *ex Officio* Informations condemned by any legal deciſion. And unleſs our Auguſt Senate take them into their conſideration, things muſt remain in their preſent ſituation.

HAPPY were it indeed for the nation if they could be aboliſhed; but if we may be allowed to judge from the preſent diſpoſition of things, it is rather the object of our wiſhes than expectations. It ſeems to be the preſent prevailing mode of thinking with our bleſſed Governors, that it is neceſſary to check the petulance of the People; and that to dragoon them into ſubmiſſion, is no more than a little wholeſome caſtigation. And that Adminiſtration, Parliaments, and Courts of Law, are of too ſacred a nature to be ſpoke of by the Vulgar. By the word *Vulgar* (my gentle Reader) is meant all this great and opulent nation, except a few inſignificant Lords and Courtezans, who dwell within the purlieus of St *J*——*s*'s, who emphatically ſtile themſelves *The World*; and who

who look upon all others as an inferior claſs of beings, not worth their regard.

So great is the neceſſity of checking the Licentiouſneſs of the People, that I have heard it more than once aſſerted, that it is intended to conſtitute a Licenſer of the Preſs and of Prints. A *fac-ſimile* of a Lord Chamberlain, whoſe buſineſs it will be to peruſe every manuſcript before it can be printed, to grant his *Imprimatur* to all ſuch as coincide with the views of Government, and his *Damnatur* to thoſe that do not. If this is ever effected (and I have no doubt but it is the preſent plan) we muſt bid adieu to all our romantic ideas of *Liberty*, as only fit for Utopian Governments: We ſhall have nothing elſe to do but to hug thoſe chains, which will be rivetted on ſo faſt that it will be impoſſible for us to extricate ourſelves from them.

Such being the colour and complexion of our worthy Governors, what can we expect to ſee done to check the luxuriant growth of *ex Officio* Informations, as they ſerve the very uſeful purpoſes of deſtroying

the very embryo of every publication that tends to expoſe the weakneſs and iniquity of Adminiſtration.

HAVING ſhewn that Informations are in their nature of ſo dangerous a tendency, ſo repugnant to the Spirit of our Laws and Conſtitution, and pregnant, in their preſent rampant growth, with ſo many evils to the public weal; it remains that I ſhould now treat of the preſent faſhionable mode of Proſecution by ATTACHMENT.

AN *Attachment* I may, I think, with propriety define to be a Commitment to Priſon by a Court of Record, for a Contempt to the Proceſs of that Court from which it iſſues. It is ſaid, that Attachments took their Riſe from the Statute of *Weſtminſter*, the 2d C. 39. whereby the Sheriff had a power of committing ſuch as reſiſted the proceſs, *à fortiori* it was conſtrued that the Judges of that Court from whence the Proceſs iſſued had a power of committing. It is an abſolute, unlimited, ſummary Power veſted in the Court, to enforce obedience to its proceedings. It is a Commitment during pleaſure,

pleaſure, " *a qua* (ſay the books) *non deli-*
" *berentur ſine ſpeciali mandato Domini Regis.*"
Having given it the above definition, which I am ſtrictly warranted in doing by the books, and by the uniform, conſtant practice of the Court, till at leaſt very lately; I am now to examine into the nature of ſuch proceedings on Conſtitutional Principles: It muſt be admitted, that this power veſted in Courts of Record, when exerted with diſcretion, and confined within due bounds, is of no very dangerous conſequence, but tends to the expediting of Juſtice.

In caſe a perſon ſhould diſobey the proceſs, reſiſt the execution of it, or in the face of the Court behave contemptuouſly, by inſulting the Judge on the bench, accuſing him of Injuſtice, Bribery, &c. it is a ground of Attachment. Indeed, were it not for ſuch a power conſtitutionally inherent in Courts of Judicature, their authority might be trampled upon, and juſtice would be delayed, if not entirely eluded. The Court is not to wait for the ſlow method of indicting the party for a miſdemeanor in contemning its power, but commits him *inſtanter* by an At-

tachment. And of ſo high and abſolute a nature is an Attachment, that it includes a *non omittas*; and a perſon may juſtify breaking open locks, doors, &c. to execute it.

So much for the Commitment, which, as I have before obſerved, is during pleaſure. When the party is impriſoned, interrogatories are exhibited to him, which he is compelled to anſwer on oath. If he contemptuouſly refuſes to anſwer, (and the late extraordinary conduct of Mr BINGLEY is the only inſtance I recollect of ſuch a refuſal) it may be worth the conſideration of lawyers, whether he is not to ſuffer the *Peine fort et dure*, as any one is who refuſes to anſwer when indicted for felony.

I WOULD inform thee, Gentle Reader, if thou art ignorant of Law, that the *Peine fort et dure* is a very mild kind of puniſhment adopted by our humane laws, which abhor all tortures, in order to puniſh ſuch incorrigible Heretics as Mr BINGLEY, who preſume to deny the omnipotence of lawyers. It is no more than tying the ſuppoſed criminal naked to the ground, drawing his legs

legs and arms by cords, and putting as great a weight as he can bear upon his breaſt. In this ſituation he has a morſel of bread and a drop of ditch-water every twenty-four hours, till he expires. But if this puniſhment is not inflicted on the party that refuſes to anſwer Interrogatories on Attachment, the leaſt that can be expected will be perpetual impriſonment.

In caſe the party anſwers, and has not the hardineſs to ſwear himſelf innocent, he is puniſhed as a convict by the Court, without any farther Trial either by God or his Country. By this means he is obliged to turn ſelf-accuſer, and give evidence againſt himſelf, contrary to that fundamental maxim of Law, "*Nemo tenetur ſeipſum accuſare.*"— This is an inferior ſpecies of putting a man to the torture, to make him confeſs. The Reader may imagine that I am ſpeaking of Proſecutions in *Turky* or *Algiers*; I deſire he would recollect, that I am ſpeaking of *England*.

Strange indeed does it ſeem, that the Laws of *England*, which in every caſe are repreſented

preſented to be ſo favourable to Liberty and a Trial by Jury, (which is the very corner-ſtone of our Conſtitution) ſhould, in this inſtance, be of ſo very different a nature as to be repugnant to the one, and ſet the other totally aſide. It would not have been ſo ſurpriſing, if it had exiſted in the days of CHARLES the Firſt; but that it ſhould remain to the days of GEORGE the Third, adds to our aſtoniſhment. And that it ſhould, even in this refined æra of civil Liberty, be a more faſhionable mode of proſecution than it was in the rude ages of *Saxon* and *Norman* Barbarianiſm, (when its name was not even known) during the different ſucceſſions of *Plantagenets*, *Yorkiſts*, and *Lancaſtrians*, or during the more deſpotic reigns of tyrant *Stuarts*, ſeems ſtill more extraordinary.

THE great FORTESCUE, who was Chancellor in the time of HENRY the Sixth, ſays, that "*Leges Angliæ in omni caſu libertati dant fa-*"*vorem.*" Had he lived in the preſent age, he would have retracted ſo falſe an aſſertion.

FOR ſuch a multifarious number of offences are Attachments now iſſuable, and ſo familiar

familiar are they become, that, in my conſcience, was a perſon to inſult the Common-Cryer of the Court, it might, for aught I know, be conſtrued to be a proper ground for an Attachment. For I believe it is now a ſettled point, that to ſpeak with freedom of any of the Officers of the Court, though (if I may be allowed the phraſe) in their extra-curial capacity, is a proper ground for an *Attachment*.

HAVING ſpent ſome years of the former part of my life in legal lucubrations, I had unfortunately imbibed very heterodox notions of Law; but I have lived long enough to ſee them corrected by a contrary practice. For I thought, and I was juſtified in ſo thinking, from caſes of Law, and the practice of the Courts, that *Attachments* were only iſſuable for contempts, or diſobedience to the proceſs of the Court. This was my idea of it, which later times have taught me to retract.

IN the couſe of my reading and obſervation, I find, that *Attachments* have been generally iſſued againſt the Officers of the Court,

Court, or ſuch as are intruſted with the execution of its proceſs; Sheriffs for neglecting to execute writs, Bailiffs for male-practices; Goalers for cruel uſage to priſoners; Attorneys and Counſellors for flagrant miſbehaviour in their profeſſions, &c. Doubtleſs, if this mode of proceeding by *Attachment* is to be encouraged in any caſe, it muſt be where the Court exerciſes it againſt its own Miniſters and Officers, to enforce the execution of juſtice, and to prevent delays. Satisfied I am that this, and the puniſhment of flagrant contempts in the face of the Court, ſuch as arraigning the juſtice of the proceedings of the Court, were originally the ſole cauſes of the proceſs by Attachment: Such was the caſe of Counſellor RENNET, who inſulted the Judges on the bench, and who was, doubtleſs, not improperly puniſhed for ſo open a contempt. The authority of Courts of Law would be a mere *brutum fulmen*, were it not in their power to puniſh by an immediate Commitment, when inſulted to their faces; and it would bring them into general contempt and diſrepute. Nothing is more neceſſary, in every well-governed country, than that Judges ſhould be

be held in the higheſt eſteem and veneration, that their deciſions might have proper weight and authority. Among the ancient *Britons* and *Germans*, the offices of Prieſts, Lawgivers, and Judges, were united. The ſacred characters they bore, commanded the moſt profound veneration from the people, as if they acted immediately by divine authority. TACITUS ſays, in his admirable treatiſe, *De Moribus Germanorum*, "*Cæterum* "*neque animadvertere neque vincire neque ver-*"*berare niſi ſacerdotibus permiſſum.*"

IT is not denied by me, but that *Attachments* are in many inſtances very neceſſary to keep up the authority and dignity of the Court: I mean only to argue againſt their perverſion. In the time of CHARLES the Second, it was a moſt common practice to attach Jurymen, for not finding a verdict according to the Judge's direction. This very alarming power that the Judges then uſurped, was the ſubject of many debates in Parliament; and were it not for them, would (in my conſcience) have remained ſtill a ſubject of great national grievance: So neceſſary is it

for Parliament to keep a watchful eye over the proceedings in *Weſtminſter-Hall*, to correct, enlarge, or curtail their juriſdiction, as may ſeem moſt proper in the ideas of legiſlative Wiſdom! Were it not for this corrective power, they might extend their empire to lengths unlimited.

We have been ſo happy as to find in one Court in *Weſtminſter-Hall* the mode of proceeding by *Attachment* much diſcountenanced. Upon a motion to a late Chief Juſtice, (who now adds dignity and luſtre to the moſt exalted ſtation) for an Attachment againſt ſome perſons who had printed what was eſteemed diſreſpectful and libellous to the Chief Juſtice; he returned this memorable anſwer: "I have been loaded "with much unmerited praiſe, and ſome "unmerited cenſure; I will ſet one off a-"gainſt the other, and the balance will be "ſtill greatly in my favour." The upright Judge treated the application with very little regard, and the learned Serjeant got nothing by his motion.

How

How much more amiable is ſuch a conduct, than if he had animadverted with the greateſt ſeverity on ſome perſonal aſperſions (from which the faireſt character is not always free) as Contempts of the Court, and made them the grounds of *Attachments*. And ſo by endeavouring to vindicate his own reputation, would have ſullied it beyond any thing that plebeian malice and obloquy could ſuggeſt.

A VERY extraordinary application was lately made to the ſame Court, which met with the ſame fate. A certain Serjeant, famed for his mellifluous Eloquence, moved the Court for an *Attachment* againſt the printers of a certain Patriot's Addreſs to his Conſtituents, for repreſenting his ſentence as ſevere. The Court very properly obſerved, that it is not arraigning the Juſtice of the Court to call his Sentence *ſevere*; for Severity and Juſtice are not incompatible. The *ultimum ſupplicium* is a ſevere ſentence, yet in many caſes is juſt. The learned Serjeant retired with indignation when his motion was refuſed; determined, doubtleſs, to apply in another place, where ſuch an ap-

plication would be attended with better ſucceſs. *Flectere ſi nequeam ſuperos Acheronta movebo.*

I HAVE quoted two very recent inſtances where Attachments were diſcountenanced; I wiſh it were in my power to mention many more ſuch examples worthy the imitation of ſucceeding Chief Juſtices.

IF Courts of Law ſhould aſſume to themſelves an unlimited power of proceeding againſt any one for any offence by way of *Attachment*, I will be bold to affirm that they far exceed the limits of their juriſdiction; that they will exerciſe a power ſubverſive of the radical principles of our Conſtitution, and odious to every idea of Liberty.—If offences againſt the Court are to be conſtrued in their moſt extenſive and unreſtrained ſenſe, I profeſs I know of no crime, no offence, or any thing that hath the ſemblance of a crime, that may not, by ſuch a conſtruction, be termed a *Contempt of the Court*. We will argue in the following manner.

ALL

All Courts of Law are founded for the puniſhment of crimes and offences that are prejudicial to the good of ſociety. All crimes are prejudicial to the good of ſociety: therefore, thoſe that commit ſuch crimes do it in derogation of the juriſdiction of the Court, and contempt of their power, which was conſtituted for the correction of ſuch crimes; and thoſe that commit an act in contempt of the power of the Court, may be proceeded againſt by way of Attachment. Thus we ſee, by the plaineſt logical inference, a lawyer may juſtify the Court's proceeding by Attachment for any offence whatſoever.

In the caſe of the King and Almon, which was frequently argued at the bar, the doctrine of Attachments was fully conſidered. It was a motion made by the Attorney-General for an Attachment againſt the publiſhers of a little pamphlet relative to the proceedings againſt Mr Wilkes. This pamphlet unfortunately contained a character of a Lord Chancellor now dead, and was ſuppoſed indirectly to hint at the conduct of a great Lawyer now alive. For theſe two mighty

mighty offences, heaven and earth was moved to puniſh the publiſher of this moſt atrocious *Libel*, as it was then termed. After reiterated arguments, the Judges took time to give their opinions; but, to this day, no opinion was ever given, that I heard of. For what reaſons the Court did not give their opinions, may be ſafer for the Reader to gueſs than me to explain. The poor publiſher muſt have been put to a great expence to ſhew cauſe, without ever having the ſatisfaction to have it determined. It ſtill hangs like a mill-ſtone over his head, ready to fall upon him and cruſh him to atoms.

I THINK the public were much intereſted in the event of that caſe; and great would have been the cauſe of triumph, if the Court had determined that an Attachment was an improper and unconſtitutional method of proceeding for ſuch an offence. Or, peradventure, it was only intended, when it was moved for, to ſerve the purpoſes of an *ex Officio* Information; that is, to harraſs and fleece the poor bookſeller pretty handſomely, and then drop the proſecution; which

which is, in other words, to puniſh him before he is convicted.

VERY alarming and dangerous to the Liberty of the Subject is the mode of proceeding by Attachment, as it tends totally to ſet aſide a Trial by Jury. Informations only ſet aſide the neceſſity of having a Grand Jury; this, both Grand and Petit. The party injured, which is the Court, or perhaps the Judge of the Court, is Accuſer, and acts alſo both as Judge and Jury.

THIS is contrary to the fundamental principles of the *Engliſh* Laws, which ſay, "That no one can be Judge in his own "cauſe;" *Nemo judex in propria cauſa?* It is contrary to the unerring rules and principles of natural juſtice, to give a man an authority of determining an affair, wherein he himſelf is the perſon intereſted; to puniſh for an offence done to himſelf. Ought it not rather to be done by another, who ſees not through the falſe medium of prejudice, and whoſe judgment is not biaſed by partiality or reſentment?

OUR

OUR laws reject even the teſtimony of a man who is in the leaſt affected by, or intereſted in the event. Can the ſame laws that debar a man from giving evidence, who has the leaſt *ſcintilla* of intereſt in the cauſe, in other caſes unite in the ſame perſon the different characters of *Proſecutor*, *Evidence*, *Judge*, and *Jury?* However abſurd and paradoxical this may ſeem, Gentle Reader, it is the creed of Lawyers; and whoever preſumes to call it in queſtion, the dreadful anathema of being perpetually excluded from all hopes of preferment will be unremittingly denounced againſt him.

VERY large and capacious muſt be the faith of a lawyer, otherwiſe he never will be clothed in ermine, or ſit in the judgment-ſeat.

IF thou art a young Templar that readeſt theſe ſheets, know that thou muſt implicitly believe that the King is poſſeſſed of the Attributes of Divinity; thou muſt believe that the King is all-wiſe, and all-juſt; that in him there is no folly nor *lacheſſe* at all; no, nor in his Miniſters nor Judges; for they are his

his Repreſentatives, and partake of his wiſdom: Thou muſt believe that he is the *fountain of all goodneſs*, juſtice, and honour; yea, thou muſt believe that he *can do no wrong*, and that *he never dies*. This, Gentle Reader, thou wilt find to be the creed of all Lawyers, and is contained in all the Tomes of Law from BRACTON to BLACKSTONE's *Commentaries*, as the fundamental principles of Law, and neceſſary to Court-Preferment. And thou muſt be careful that thy practice be agreeable to this thy faith.

In the foregoing *Conſiderations*, I have endeavoured to argue on legal principles; yet in ſuch a manner as to make myſelf intelligible to every man, though not by profeſſion a lawyer. Senſible I am, that I could have produced a cloud of law-caſes to corroborate what I have advanced. I deny not but that a greater variety of caſes and precedents might have been quoted to prove a contrary practice. I choſe to argue from principles of reaſon and law, not from blind authorities. I deſire that what I have advanced may ſtand or fall by thoſe teſts of reaſon, law, and truth.

I DOUBT not but ſome puny Antagoniſt, who gapes after Court-preferment, or the pliant diſciple of ſome Grand Juſticiary, full of his maſter's over-weening conceit, and armed at all points with law-caſes, may enter the liſts of argumentation, to wield the weapons of controverſy with me. Such perſons are always at hand, ready to undertake any little dirty miniſterial jobb. They are *in utrumque parati*, to blame or defend, to blacken or whitewaſh, any man or meaſures.——If any ſuch doughty champion ſhould ariſe, I will only tell him, that if he can diſprove the principles I have gone upon, I ſhall yield him the palm.

FROM the foregoing Conſiderations, I think it may not with impropriety be deduced, That the proceedings by *Informations* and *Attachments*, however conſonant to the practice of the Courts, yet in their preſent arbitrary and unlimited empire, are totally repugnant to the ſpirit of the *Engliſh* Laws and Conſtitution; that they are ſubverſive of all the principles of *Engliſh* Liberty; and that the *Grand Palladium* of it, A *Trial* by JURY, is by Informations in part

ſet

ſet aſide; and by Attachments totally annihilated. That Informations (in particular the *ex Officio* Informations of the Attorney-General) are the means of great oppreſſion and expence; which may, *ad libitum*, be uſed by the Crown to the utter ruin and deſtruction of any man, however innocent he may be, without ever having a Trial by his country; which has been evidenced in repeated inſtances.

THAT *Attachments* ſeem gradually to have been perverted from their original deſign and intention; that they are of a colour and complexion very different from all the reſt of our Laws, as they unite in the ſame perſon the diſtinct characters of *Accuſer*, *Evidence*, *Judge*, and *Jury*; that, for the ſecurity of the ſubject's perſon, liberty, and property, it is preſumed, theſe modes of proſecution ought to be moderated, limited, and reſtrained.

HAVING, as it is apprehended, ſet theſe matters in their true and proper light, and ſaid as much as I think is neceſſary to be ſaid upon them; I doubt not but the patri-

otic Reader coincides in what has been advanced, and anticipates my wiſhes, that theſe modes of proſecution were to become the objects of Parliamentary Conſideration. It was the hopes of ſeeing them examined by the Legiſlature, the next ſitting of Parliament, that induced me to write theſe ſheets. My end is attained, if this ſmall publication ſhould tend to excite ſuch ſentiments in others who have power to redreſs theſe grievances, as the conſideration of them has done in me; eſpecially if ſuch ſentiments ſhould be the means of checking their exorbitant growth. If ſuch lines were drawn as to have them confined within due and and proper bounds; if the Attorney-General's *ex Officio* Information, for inſtance, was entirely abrogated, as was that of the Maſter of the Crown-Office ſome years ago; and Attachments confined to the proper officers of the Court, to enforce the ſpeedy execution of juſtice, as it was originally intended.

MELANCHOLY is the ſituation of the times, when it is impoſſible to define what may *not* be the ſubject of an *ex Officio* Information, or an Attachment. *Ubi nec ſentire*

quæ

quæ libet nec quæ ſentias dicere licet. It is the moſt abſolute badge of ſervitude, when the people are reduced to a ſtate of miſery, that they ſhall not be allowed to complain of their miſeries. It is a privilege that even priſoners in a dungeon, and galley-ſlaves enjoy, of venting their griefs. Shall the free-born ſubjects of this land of liberty not be allowed to ſpeak, when galled by oppreſſion? No, ſays the Attorney-General, they ſhall not.

SHOULD there in future times, (which GOD forbid) ariſe Judges that would by the conſtruction of old Laws make new; ſhould they, by illegal and arbitrary impriſonments, endeavour to ſap the foundations of our beſt Laws, *Magna Charta*, and the *Habeas Corpus* Act; ſhould they, induced by menaces or bribes, act unjuſtly, or delay the execution of juſtice; ſhould they ſtudiouſly endeavour to captivate the ſmiles of a Court, to load themſelves and dependents with places or penſions: Or ſhould there be a Miniſtry, in this unhappy country, that would burden the nation with taxes in time of peace, equal to what they ſuſtained in time

time of war: ſhould they apply thoſe taxes, not to the exigencies of the public, but to private emolument: ſhould they ſquander, annually, millions of the public treaſure, extorted from the induſtrious hands of needy peaſants, in penſions to court-paraſites, bawds, and courtezans: ſhould unneceſſary places and offices be erected, and conſequently unneceſſary expences to Government be created: ſhould the reign of public Corruption be univerſal; and ſhould thoſe, that ought to be the pillars of a ſinking ſtate, become the moſt rotten and corrupt, and unite together, to prey like vultures on the vitals of their ruined country: ſhould things be brought to ſuch a ſituation as I have deſcribed; and ſhould the people not exert the liberty of exclaiming againſt ſuch oppreſſions; ſurely the ghoſts of thoſe venerable patriots, who reduced the haughty Monarch to ſign the Charter of his ſubjects' Liberty at *Runnymede*, and thoſe heroes who brought the tyrant STUART to the block, would ariſe from the dead, to call on their poſterity to exert themſelves in defence of their liberties. Our anceſtors have ſhewn, that the perſons even of Kings were *not ſacred*, when they trampled

pled on their ſubjects liberties; and that they held their Crown on the condition of defending their ſubjects rights. Are we then reduced to ſo low an ebb, as even to be obliged to hold the perſons of Miniſters *ſacred?*

THOUGH I would not willingly adopt any deſponding ideas, and would be deſirous of ſaying, in the worſt of times, "*Nil deſperandum eſt de Republicâ*;" yet, from the preſent concatenation of public affairs, there needs but little of the ſpirit of prophecy to foretel the diſſolution of our Government and Conſtitution. Unleſs a great reformation is eſtabliſhed in all the departments of government and public adminiſtration, ſuch an event is much nearer than moſt people apprehend. If all our heavy taxes are ſcarce ſufficient to defray the expences of Government, and pay the intereſt of our debts in time of peace; tell me, ye wiſe and uncorrupt Governors! how will you bear a long and expenſive war! A ten year's war muſt inevitably bring the nation to the brink of deſtruction. But our prudent G———s, inſtead of making proviſion againſt ſuch an event, which cannot in the nature of things be

be far diſtant, are employed in reducing the people to a ſtate of vaſſalage; and ſquandering, like ſpendthrifts, what ought to be laid by againſt a time of need.

It becomes every honeſt man to oppoſe innovations on our laws and conſtitution, which threaten a diſſolution of our civil government; and to ſtem the torrent of Court-power, when exerted in an unconſtitutional manner. Great and commendable is the conduct of *that* MAN, who has oppoſed with ſo much fortitude the tyrannical acts of Miniſters. Though I diſeſteem the *Man*, I admire the *Patriot*. I would point him out as an example to the riſing generation, which cannot be done with greater force and propriety, than in the dying words of THRASEAS to HELVIDIUS and DEMETRIUS, with which I ſhall conclude theſe CONSIDERATIONS:—

" *Spectа quidem, O Juvenis, et omen quidem*
" *di prohibeant, cæterum in ea tempora natus*
" *es quibus firmare animum expediat conſtanti-*
" *bus exemplis.*"

THE END.